

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SONNY RAY HARDAWAY,

No. C 08-3677 WHA (PR)

Plaintiff,

ORDER OF DISMISSAL

vs.

JEREMY FOGEL,

Defendant.

Plaintiff, an inmate at Kern Valley State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

A. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2).

B. LEGAL CLAIMS

Plaintiff asserts claims against United States District Judge Jeremy Fogel, of this court. Judge Fogel is alleged to have ruled against plaintiff in a previous case for various improper reasons, including racism and in retaliation for petitioner having filed a petition for a writ of

1 mandamus in the United States Court of Appeals for the Ninth Circuit.

2 Plaintiff's claims clearly arise from actions taken by Judge Fogel in his judicial capacity,
3 for which he is absolutely immune from claims for damages. *See Pierson v. Ray*, 386 U.S. 547,
4 553-55 (1967) (applying judicial immunity to actions under 42 U.S.C. § 1983). Plaintiff has not
5 stated a claim.

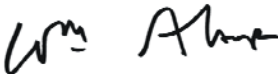
6 Because no amendment could change the fact that plaintiff's claims are asserted against
7 defendant for actions taken in his judicial capacity, this case will be dismissed without leave to
8 amend. *See Lopez v. Smith*, 203 F.3d 1122, 1127, 1129 (9th Cir. 2000) (en banc) (district courts
9 must afford pro se prisoner litigants an opportunity to amend to correct any deficiency in their
10 complaints, unless no amendment could save the complaint).

11 **CONCLUSION**

12 This case is **DISMISSED** with prejudice. The clerk shall close the file.

13 **IT IS SO ORDERED.**

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15 Dated: August 21, 2008.

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18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SONNY RAY HARDAWAY,
Plaintiff,

Case Number: CV08-03677 WHA

CERTIFICATE OF SERVICE

v.

JEREMY FOGEL,
Defendant.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 21, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Sonny Ray Hardaway P-45579
Kern Valley State Prison
A3-107L
PO Box 5101
Delano, CA 93216

Dated: August 21, 2008

Richard W. Wieking, Clerk
By: D. Toland, Deputy Clerk